

11 pgs
Exhibit A

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ORA EZELL,

Plaintiff,

v.

SHERMAN ACQUISITION II, LP;
SHERMAN ACQUISITION II
GENERAL PARTNER LLC;
NATIONAL ACTION
FINANCIAL SERVICES, INC.;

Defendants.

JUDGE : Edmunds, Nancy G.
DECK : S. Division Civil Deck
DATE : 06/07/2004 @ 14:40:39
CASE NUMBER : 2:04CV72119
CMP ORA EZELL V SHERMAN
ACQUISITION ET AL (DQH)

MAGISTRATE JUDGE DONALD A. SCHEER

COMPLAINT – CLASS ACTION

INTRODUCTION

1. Plaintiff brings this action to secure redress against unlawful credit and collection practices engaged in by defendants Sherman Acquisition II, LP ("SA2"), Sherman Acquisition II General Partner, LLC ("SA2GP"), and National Action Financial Services, Inc. ("NAFS"). SA2 purchases charged-off credit card debts for between two and three cents on the dollar and attempts to collect them, using misleading collection letters sent out under the name of NAFS, a collection agency. SA2GP is the general partner of SA2. Plaintiff alleges a violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA").

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§1331, 1337 and 15 U.S.C. §1692k (FDCPA).

3. Venue in this District is proper because:

a. Plaintiff resides here;

- b. Defendants do business here;
- c. Defendants' collection communications were transmitted into the District.

PARTIES

Plaintiff

- 4. Plaintiff Ora Ezell is an individual who resides in Detroit, Michigan.

Defendants

- 5. Defendant SA2 is a Delaware limited partnership entity. Its registered agent is Corporation Trust Company, 1209 Orange St., Wilmington, DE 19801.
- 6. Defendant SA2 is in the business of buying bad debts allegedly owed by consumers, including large amounts of credit card debts, for a small fraction of face value and enforcing the debts against the consumers.
- 7. SA2 is a debt collector as defined in the FDCPA. It is part of the Sherman Financial Group ("SFG").
- 8. SFG hired NAFS to collect bad debts it purchased in States including Michigan.
- 9. Defendant SA2GP is a Delaware limited liability company. It is the general partner of SA2. Its registered agent is Corporation Trust Company, 1209 Orange St., Wilmington, DE 19801.
- 10. Defendant NAFS is a corporation with its principal place of business located at 165 Lawrence Bell Drive, Suite 100, Williamsville, NY 14231. It operates a collection agency and is a "debt collector" as defined in the FDCPA. It does business in Michigan.

FACTS RELATING TO PLAINTIFF EZELL

11. On or about Feb. 13, 2004, NAFS sent plaintiff Ezell the collection letter attached as Exhibit A, seeking to collect a debt incurred for personal, family or household purposes. Plaintiff received it a few days later.

12. Exhibit A is a form letter.

13. NAFS sent Exhibit A on behalf of SA2, as its authorized collection agent.

14. Exhibit A states that "Sherman has advised us that interest will continue to accrue on your account as provided for in your agreement with the original credit grantor."

15. This language was approved or supplied by SA2.

VIOLATION ALLEGED

16. Exhibit A states a balance and further states that interest will continue to accrue.

17. Exhibit A does not state as of what date the balance given applies, or how long it is valid for.

18. Exhibit A insists that "the entire balance due" must be paid. The implication of the statement that interest is continuing to accrue is that the balance stated is not the entire balance due.

19. None of the letters contains the "safe harbor" language approved in Chuway v. National Action Financial Services, 362 F.3d 944 (7th Cir., Ill. March 30, 2004).

20. As a result, each of the letters is confusing to the unsophisticated consumer, in that it states that the debt will increase, but does not explain how the consumer should determine

what to pay, in violation of 15 U.S.C. §1692e, and/or fails to coherently inform the consumer of the amount of the debt, in violation of 15 U.S.C. §1692g.

CLASS ALLEGATIONS

21. Plaintiff brings this claim on behalf of 2 classes, designated SA2 and NAFS.

22. Class SA is defined with respect to SA2. It consists of all natural persons with Michigan addresses who satisfy the following criteria:

- a. SA2 owned their alleged credit card debt;
- b. A letter was sent to the person which (i) stated a balance due, (ii) did not state the date as of which the balance was stated, (iii) stated that the debt was accruing interest as provided for in the debtor's agreement with the original credit grantor, (iv) demanded payment of the "balance" or "entire balance" due, and (v) did not contain the "safe harbor" language specified in Chuway.

- c. The letter was sent on or after a date one year prior to the filing of this action and before April 10, 2004.

23. Class NAFS is defined with respect to NAFS. It consists of all natural persons with Michigan addresses who satisfy the following criteria:

- a. NAFS sent them a letter seeking to collect a credit card debt;
- b. The letter (i) stated a balance due, (ii) did not state the date as of which the balance was stated, (iii) stated that the debt was accruing interest as provided for in the debtor's agreement with the original credit grantor, (iv) demanded payment of the "balance" or "entire balance" due, and (v) did not contain the "safe harbor" language specified in Chuway.

- c. The letter was sent on or after a date one year prior to the filing of this

action and before April 10, 2004.

24. The class members are so numerous that joinder is impracticable. On information and belief, there are more than 50 members of each class.

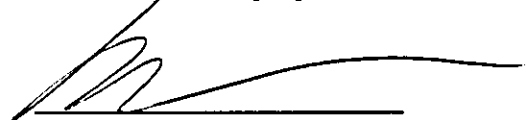
25. There are questions of law and fact common to the class members, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether the collection letters at issue violate the FDCPA.

26. Plaintiff will fairly and adequately represent the interests of the class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

27. A class action is an appropriate means of adjudicating this dispute. Individual cases are not economically feasible.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class members and against defendants for:

- a. Statutory damages (\$1,000 to plaintiff and the lesser of \$500,000 or 1% of net worth for the class) against each defendant;
- b. Attorney's fees, litigation expenses and costs of suit;
- c. Such other or further relief as the Court deems proper.



Lynn H. Shecter

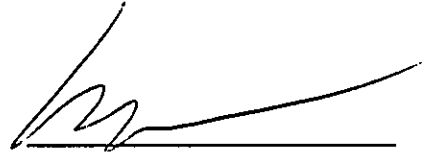
Lynn H. Shecter
ROY, SHECTER & VOCHT, P.C.
36700 Woodward Avenue, Suite 205
Bloomfield Hills, MI 48304
(248) 540-7660

(248) 540-0321 (FAX)
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Daniel A. Edelman
Cathleen M. Combs
James O. Latturner
Jeremy P. Monteiro
EDELMAN, COMBS & LATTURNER, LLC
120 S. LaSalle Street, 18th Floor
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)
jmonteiro@edcombs.com

JURY DEMAND

Plaintiff demands trial by jury.



Lynn H. Shecter

J:\case\nation-ezell11.966\pleading\cmplt.wpd

A

165 LAWRENCE BELL DR STE 100
PO BOX 9027
WILLIAMSVILLE, NY 14231-9027

FORWARDING SERVICE REQUESTED



FEB 13 2004

47764180



ORA EZELL
19188 STEEL ST
DETROIT MI 48235-1236

A171
KL51
150

NAFS
National Action Financial Services, Inc.
1-716-565-1020 1-877-829-7982
Fax 716-565-1041

Previous Creditor: Montgomery Ward - WM
FLIP C

Current Creditor: Sherman Acquisition II

Account Number: [REDACTED]
Balance: \$3424.67

NATIONAL ACTION FINANCIAL SERVICES
PO BOX 9027
WILLIAMSVILLE, NY 14231-9027
[REDACTED]

Please check box if above address is incorrect
and indicate change(s) on reverse.

▼ Please detach and return top portion with your payment

Dear Ora Ezell:

Sherman Acquisition II LP has purchased the above referenced account from the above referenced Previous Creditor. Sherman has placed your account with this agency for collection. Sherman has advised us that interest will continue to accrue on your account as provided for in your agreement with the original credit grantor.

We recognize you may have experienced difficult circumstances that prevented you from repaying this obligation as originally agreed. Please remit the entire balance due to our office using the return envelope provided. If you have any questions or wish to discuss your account with one of our representatives, please call our toll-free number at 1-877-829-7982.

This is an attempt to collect a debt and any information obtained will be used for that purpose. This is a communication from a debt collector.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgement and mail you a copy of such judgement or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original credit grantor, if different from the current credit grantor.

NATIONAL ACTION FINANCIAL SERVICES, INC., 165 LAWRENCE BELL DRIVE, STE 100, P.O. BOX 9027, WILLIAMSVILLE, NY 14231-9027.

SEE REVERSE SIDE FOR IMPORTANT PRIVACY NOTIFICATION FROM YOUR CREDITOR.

CIVIL COVER SHEET

COUNTY IN WHICH THIS ACTION AROSE:

WAYNE

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

ORA EREW 04-72119

(b) County of Residence of First Listed:

WAYNE

26163

(c) Attorneys (Name, Address and Telephone Number)

Lynn H. Sheeter (Plaintiff)
Roy, Sheeter & Volter, P.C.
36705 Woodward Ave Ste 205
Bloomfield Hills, MI 48304
Add rps

DEFENDANTS

Edmunds/DAS

SHERMAN ACQUISITION II, LP
SHERMAN ACQUISITION II GENERAL PARTNERSHIP
NATIONAL ACTION FINANCIAL SERVICES, INC.

County of Residence of First Listed

WILMINGTON, DELAWARE

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

NANCY G. EDMUNDS

MAGISTRATE JUDGE DONALD A. SCHEER

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for PLA and One Box for DEF)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal of Business in This State ☐ 4 ☐
- Citizen of Another ☐ 2 ☐ 2 Incorporated and Principal of Business in Another State ☐ 5 ☐
- Citizen or Subject of Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodity Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Action

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 USC § 1692k Fair Debt Collection Act—using misleading collection letters

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$ DEMAND

 CHECK YES only if demanded in complaint
 JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6.7.04

SIGNATURE OF ATTORNEY OF RECORD

X LYNN H. SHEETER

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☐ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☐ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
